



General Assembly

January Session, 2009

***Raised Bill No. 6705***

LCO No. 5070

\*05070\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING HABEAS CORPUS REFORM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2009*) Sections 1 to 5, inclusive,  
2       of this act apply to any application for a writ of habeas corpus filed on  
3       or after the effective date of this section that is brought by or on behalf  
4       of a person who (1) has been convicted of an offense, as defined in  
5       section 53a-24 of the general statutes, in order to obtain such person's  
6       release by challenging his or her conviction or sentence, or (2) has been  
7       found not guilty by reason of mental disease or defect pursuant to  
8       section 53a-13 of the general statutes and committed to the jurisdiction  
9       of the Psychiatric Security Review Board in order to obtain such  
10      person's release by challenging such commitment.

11      Sec. 2. (NEW) (*Effective October 1, 2009*) The remedy of habeas  
12      corpus is not a substitute for and does not affect any remedy incident  
13      to the proceedings in the trial court or direct review of the conviction.  
14      Except for the remedies of appeal, petition for a new trial, sentence  
15      review in accordance with section 51-196 of the general statutes,  
16      sentence reduction or discharge in accordance with section 53a-39 of

17 the general statutes and the authority possessed by the sentencing  
18 court at common law to correct an illegal sentence, the remedy of  
19 habeas corpus as provided for in sections 1 to 5, inclusive, of this act,  
20 comprehends and takes the place of all common law, statutory and  
21 other remedies available prior to the effective date of this section for  
22 challenging the validity of a conviction, sentence or commitment and  
23 shall be used exclusively in place of such remedies.

24 Sec. 3. (NEW) (*Effective October 1, 2009*) (a) A claim for relief raised  
25 in an application for a writ of habeas corpus, or in an amended  
26 application, shall be procedurally barred and no court may decide the  
27 claim if it was raised and decided, either on the merits or on  
28 procedural grounds, in any earlier proceeding or it could have been  
29 raised but was not raised:

30 (1) At any time prior to the imposition of sentence in the proceeding  
31 that resulted in the applicant's conviction or commitment;

32 (2) In a direct appeal from the proceeding that resulted in the  
33 applicant's sentence or commitment; or

34 (3) In a previous habeas corpus proceeding challenging the same  
35 sentence or commitment.

36 (b) Notwithstanding the provisions of subsection (a) of this section,  
37 a court may hear a claim if:

38 (1) The applicant demonstrates good cause for his or her failure to  
39 bring the specific claim in the earlier proceedings and actual prejudice  
40 resulting from that failure. For purposes of this subsection, an  
41 applicant shows good cause by identifying an objective factor external  
42 to the defense that impeded his or her ability to raise the specific claim  
43 during the earlier proceedings, and shows actual prejudice by  
44 demonstrating that the failure to raise the claim resulted in a finding of  
45 guilt, a sentence or a commitment so infected by error that it violates  
46 due process. In addition, if proven, the ineffectiveness of counsel for

47 failing to raise the specific claim prior to the imposition of sentence in  
48 the proceeding that resulted in the applicant's conviction or  
49 commitment, or on direct appeal, may constitute good cause and  
50 actual prejudice;

51 (2) The applicant alleges the existence of newly discovered evidence,  
52 including scientific evidence, that could not have been discovered by  
53 the exercise of due diligence by the applicant or the applicant's counsel  
54 at an earlier proceeding, and the evidence is not cumulative to  
55 evidence presented at trial, is not for impeachment purposes and  
56 establishes by clear and convincing evidence that the applicant is  
57 innocent of the offense or offenses for which he or she was convicted;  
58 or

59 (3) The applicant's claim for relief is based upon a new  
60 interpretation of federal or state constitutional law by either the  
61 Supreme Court of the United States or the Supreme Court of this state  
62 that was previously unavailable and is retroactively applicable to cases  
63 on collateral review.

64 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) No application for a writ  
65 of habeas corpus shall be allowed if filed: (1) More than three years  
66 after the date that the sentence was imposed or the commitment  
67 ordered if no direct appeal was taken, or (2) more than one year after  
68 the date of (A) the final order of the last appellate court in this state to  
69 exercise jurisdiction on a direct appeal or the termination of such  
70 appellate jurisdiction, or (B) the denial of a petition for writ of  
71 certiorari to the Supreme Court of the United States or issuance of said  
72 court's final order following the granting of such petition; whichever is  
73 later.

74 (b) Notwithstanding the provisions of subsection (a) of this section,  
75 a court may hear a claim if the applicant establishes due diligence in  
76 presenting the claim and:

77 (1) The applicant establishes that a physical disability or mental

78 disease precluded a timely assertion of the claim;

79 (2) The applicant alleges the existence of newly discovered evidence,  
80 including scientific evidence, that could not have been discovered by  
81 the exercise of due diligence by the applicant or the applicant's counsel  
82 prior to the expiration of the three-year period for the filing of an  
83 application for a writ of habeas corpus, and the evidence is not  
84 cumulative to evidence presented at trial, is not for impeachment  
85 purposes and establishes by clear and convincing evidence that the  
86 applicant is innocent of the offense or offenses for which he or she was  
87 convicted; or

88 (3) The applicant's claim for relief is based upon a new  
89 interpretation of federal or state constitutional law by either the  
90 Supreme Court of the United States or the Supreme Court of this state  
91 and made retroactively applicable to cases on collateral review.

92 (c) A new three-year period shall not commence upon a  
93 resentencing that results from an order of the review division in  
94 accordance with section 51-196 of the general statutes, an order  
95 reducing a sentence or discharging a defendant in accordance with  
96 section 53a-39 of the general statutes or an order issued pursuant to the  
97 sentencing court's authority at common law to correct an illegal  
98 sentence. Any claim for relief based upon such resentencing must be  
99 brought within one year of the date that the new sentence was  
100 imposed.

101 Sec. 5. (NEW) (*Effective October 1, 2009*) (a) The provisions of section  
102 51-296 of the general statutes shall not apply at a proceeding initiated  
103 by the filing of a second or subsequent application for a writ of habeas  
104 corpus. The court before which a second or subsequent application is  
105 pending may, if it determines that the grounds for relief raised in the  
106 application are not frivolous, that the interests of justice will be  
107 furthered and, after investigation by the public defender or his or her  
108 office, that the applicant is indigent as defined under chapter 887 of the  
109 general statutes, designate a public defender, assistant public defender

110 or deputy assistant public defender or appoint counsel from the trial  
111 list established under section 51-291 of the general statutes, to  
112 represent such indigent applicant.

113 (b) The ineffectiveness or incompetence of any counsel who  
114 represented the applicant in an earlier habeas corpus proceeding shall  
115 not be a ground for relief in a second or subsequent application.

116 (c) For the purposes of this section, "a second or subsequent  
117 application" means an application for a writ of habeas corpus filed  
118 after a first application for a writ of habeas corpus is filed.

119 Sec. 6. Subdivision (2) of subsection (a) of section 52-466 of the  
120 general statutes is repealed and the following is substituted in lieu  
121 thereof (*Effective October 1, 2009, and applicable to any application made on*  
122 *or after said date*):

123 (2) An application for a writ of habeas corpus claiming illegal  
124 confinement or deprivation of liberty, made by or on behalf of an  
125 inmate or prisoner confined in a correctional facility as a result of a  
126 conviction of a crime, shall be made to the superior court [, or to a  
127 judge thereof,] for the judicial district [of Tolland] in which the  
128 conviction, sentence or commitment being challenged was entered.

129 Sec. 7. (NEW) (*Effective October 1, 2009*) In any habeas corpus  
130 proceeding pending in the courts of this state on September 30, 2009,  
131 the law in effect prior to October 1, 2009, shall govern such proceeding.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	New section
Sec. 4	<i>October 1, 2009</i>	New section
Sec. 5	<i>October 1, 2009</i>	New section

Sec. 6	<i>October 1, 2009, and applicable to any application made on or after said date</i>	52-466(a)(2)
Sec. 7	<i>October 1, 2009</i>	New section

***Statement of Purpose:***

To provide for the more efficient administration of justice and protect the rights of victims of crime.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*